THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STONCOR GROUP, INC., Plaintiff, v. CHRISTOPHER CAMPTON, an individual, and HI-TECH INTERIORS, INC., Defendants.	No. CV05-1225 JLR STONCOR'S OPPOSITION TO DEFENDANT CAMPTON'S MOTION TO COMPEL Noted: November 25, 2005

I. INTRODUCTION

Defendant Campton asks the Court to compel StonCor to respond to various discovery requests. The motion should be denied in its entirety because it is untimely, because Campton failed to properly confer regarding the motion, and because StonCor has either appropriately responded to the requests or has made valid, timely objections that should be upheld.

II. BACKGROUND FACTS

Christopher Campton, a former StonCor employee, joined a competitor immediately after he quit working for StonCor and gave no advance notice that he was doing so. When Campton immediately began working for a StonCor competitor, and then immediately

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landed his biggest former StonCor account while working for that competitor, StonCor investigated and sued Campton for breaching his agreement not to compete and for misappropriating StonCor's trade secrets. Campton now moves for an order to compel StonCor to respond to various portions of Campton's discovery.

III. ARGUMENT

A. Defendant's counsel failed to confer on the issues raised in the motion

Despite the defendant's assertion that a discovery conference was held on the issues raised in the motion, counsel for the defendant did not confer with the plaintiff's counsel on these issues. The plaintiff's counsel had attempted three times to arrange a discovery conference on the *plaintiff's discovery requests*, not the defendant's discovery requests. (Declaration of Brian Keeley, filed with this motion, at ¶¶ 2–6.) After the defendant's counsel finally agreed to a time for the discovery conference on the plaintiff's requests, the defendant's counsel sent a brief letter identifying claimed deficiencies in responses to the defendant's requests. (Keeley Dec. ¶4.) During the conference, the defendant's counsel made several statements that mirrored those in his letter of earlier that day, but no discussion of those issues was had or even requested. (Keeley Dec. ¶7.) The plaintiff's counsel acknowledged receiving the letter, stated that he had not fully reviewed it, and said that he would look into the issues raised. (Keeley Dec. ¶7.) At no time after October 6, 2005 did the defendant's counsel request another phone or in-person conference on the issues now raised in this motion. (Keeley Dec. ¶7.)

The Federal Rules of Civil Procedure require a party moving to compel discovery responses to certify "that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action." FRCP 37(a)(2)(B). The Western District's local rules are more specific, and require that the conference be in person or by phone. WDWA CR 37(a)(2)(A). These are not hollow, empty requirements; they are in place to prevent needless

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use of court time to sort out issues that the parties' counsel should be able to sort out between each other. The defendant here did not attempt to resolve these issues before putting them before the court. And as will be demonstrated below, if the defendant had, he would have learned that many of the claimed deficiencies do not exist. Because the defendant has not conferred in good faith in an effort to resolve these issues before bringing this motion, the motion should be denied.

B. Substantive Objections

The defendant's motion is in many respects unclear about the relief that he seeks. StonCor has done its best to identify each issue the defendant puts forward, and respond to each of them.

1. Customer Lists

The defendant claims that StonCor has not produced its "customer list," yet does not identify any specific request for production that seeks that information. The closest requests for StonCor's "customer list" are Interrogatory 3, asking to identify all of StonCor's customers, and Interrogatory Number 11, asking to identify StonCor's trade secrets that the defendants misappropriated. Answering Interrogatory 3, StonCor identified those customers whom it believed at the time Campton had contacted improperly using StonCor's trade secrets. Since providing that information, StonCor has also produced a complete copy of a document it refers to as a "P-File," which is a printed representation of all of StonCor's customers in the region where Campton worked as of August 2001. (Keeley Dec. ¶8.) Since 2001, the information that comprises the P-File has been kept on a computerized system known as SFA. Campton had access to the SFA system while he was at StonCor, and he logged into the system after he abruptly left StonCor. StonCor has been, and still is, in the process of identifying all of the information that Campton had access to. The process is a time-consuming one, and is not yet finished. StonCor estimates that it will require at least two more weeks to complete this process. Once it is complete, StonCor will produce printed

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copies of information on the SFA system that Campton had access to. (Declaration of Rick Neill, filed with this motion, ¶¶2–5.)

The defendant's request for relief must be denied because he has not asked for the documents he now ask the court to order be produced, and even if he had, such documents have been produced or will be produced.

2. Pricing Strategies and Policies

In Interrogatory 24, the defendant asked for "any pricing structures, cost proposals, or bid that you have presented to Costco Wholesale Company from January 1, 1990 to present." The request is unduly overbroad both in time and in scope: it requests more than 15 years' worth of documents, and it requests documents from literally hundreds of transactions. Costco has, since 1990, used StonCor exclusively for its polymer flooring needs for new construction, store remodels, and repair work, at a pace of hundreds of distinct jobs per year. For each distinct job, StonCor gives Costco something that could be construed as a pricing structure, cost proposal, or bid. To identify these documents for every job would take significant amounts of time and resources. Moreover, the information is more easily accessible elsewhere: it is contained in the SFA computer system, which StonCor is in the process of producing. (Neill Dec. ¶6.)

The Court may limit discovery if the burden and expense of proposed discovery outweighs the likely benefit. FRCP 26(b)(2). Here, there is no benefit to be gained from compelling StonCor to produce pricing proposals for the past 15 years to Costco. Though the prices charged to Costco are a component of StonCor's trade secret, that information can be obtained in other places, notably the computer-based SFA system. The alternative is to obtain these pricing proposals from individual job files. Job files for jobs completed more than three years ago are stored in a number of offsite storage facilities. It would likely take several people several weeks to obtain this information from the archived job files. Obtaining the actual documents sent to Costco serves no additional purpose and, in light of

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the burden it would impose on StonCor, should not be ordered.

3. P-File and Cost Book

The defendant requested the "P-File" and the "Cost Book." On November 10, 2005, StonCor provided the defendants with a copy of the P-File that Campton had in his possession when he abruptly quit, and that he returned to StonCor after he quit. (Keeley Dec. ¶8.) On November 16, 2005, StonCor provided the defendants with copies of three pricing cards; these cards are what StonCor now refers to as the "cost book." (Keeley Dec. ¶9). In the past, StonCor has maintained a separate "cost book," but the information that was once contained in such a cost book is now maintained on the SFA system. StonCor is in the process of producing information that would have been available to Campton on the SFA system. StonCor has complied or will comply with these requests.

4. Identities of Various StonCor Employees

Campton asked StonCor to identify three groups of StonCor's employees in Interrogatories 6, 7, and 8. In the categories identified, StonCor currently has approximately 120 to 130 employees, and in these positions StonCor's turnover rate is more than 30%, so identifying all responsive people will require up to two more weeks to compile. StonCor will, however, provide Campton with the identities of the employees and former employees requested when it is available. Current employees, however, may only be contacted through StonCor's counsel.

5. Costco Revenue

In Interrogatory 22, the defendant asked StonCor to describe "all revenues that plaintiff generated from its work for Costco since January 1, 1990." StonCor properly objected that the request was overbroad an unduly burdensome. StonCor acknowledges that providing information on its revenue from Costco is relevant, and StonCor's own expert has relied upon that revenue information in part in reaching his opinions on StonCor's expected future damages. StonCor's expert, however, only required revenue from 1999 to the present,

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not revenue back to 1990. (Keeley Dec. ¶10.) On November 18, 2005, StonCor provided to the defendants documents relied upon by StonCor's expert in reaching his opinions. (Keeley Dec. ¶10.) This included tables summarizing StonCor's revenues from Costco since 1999. To the extent that this request is not overly burdensome, StonCor has complied with it.

6. Costco Warranty Communications

The defendant asked in RFP 14 for all communications since January 1, 2003 between StonCor and Costco concerning warranty issues Costco might have had. StonCor responded that Campton, who kept his StonCor email on his own personal computer, would have all such communications. (Neill Dec. ¶7.) The email communication that Campton, on StonCor's behalf, had with Costco is not within StonCor's possession, custody, or control because it was maintained by Campton on his own personal computers, and not on StonCor's computer system. (Neill Dec. ¶¶7–8.)

To capture and produce all other responsive communications, which would be communications between Costco and StonCor that took place since Campton quit on April 15, 2005, StonCor searched the email archives of several of its employees since that date with "Costco" in it. StonCor has been working with its counsel and with an outside vendor to produce the email messages and the attachments to them. (Keeley Dec. ¶12.) (The email messages were kept on a software platform that is difficult to extract information from.) On November 21, 2005, StonCor provided to both defendants an electronic format of all of the nonprivileged email messages and their attachments in which the word "Costco" is mentioned since April 15, 2005. (Keeley Dec. ¶12.)

Because all responsive communications were either kept by Campton or have now been produced, StonCor has complied with this request.

7. Other Assorted Requests

The defendants make a number of other requests, but did not, in his motion, identify them except by interrogatory or request number. (Motion at p.6, *ll.* 7-9.) Campton's

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requests should be denied because he has failed to adequately describe them to the court, and because he has failed to give even the most basic explanation why he might be entitled to an order compelling the production of this information. In addition, the requests have either been complied with or are improper and have been objected to.

In RFP 7, Campton requested various policy manuals and employee handbooks. In its initial response, StonCor properly objected that the breadth of this request was beyond the scope of discoverable evidence; many of StonCor's employee handbooks or policies have no relevance whatsoever to this case. On July 26, 2005, StonCor produced those policies that have any bearing on this case: its confidentiality policy and its policies regarding employees' obligations to safeguard StonCor's trade secrets. (Keeley Dec. ¶13.) Despite having received these, Campton insisted on receiving other employee handbooks and policies, even though they have no relevance to this case. On November 17, 2005, StonCor produced all other employee handbooks, policies, and information provided to all new employees. (Keeley Dec. ¶14.) StonCor has now complied with this request, even to the point of producing documents that clearly are not relevant to this case.

In RFP 11, the defendant requested "all forms of non-compete agreements used by plaintiff between 1984 and the present for Field Sales Managers, National Account Managers and Territory Managers." In response, StonCor objected to the overbreadth of this request, and also produced the forms of non-compete agreements that it has used. (Keeley Dec. ¶15.) The defendant has not explained at any point why he thinks he is entitled to additional documents. His request for relief on this issue should be denied.

In RFP 13, the defendant requested the national account agreement between Costco and StonCor. In response, StonCor provided that agreement. (Keeley Dec. ¶16.) The defendant has not explained at any point why he thinks he is entitled to additional documents. His request for relief on this issue should be denied.

Campton asks the court to order StonCor to answer RFP 14. This request was

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addressed above in the discussion about Costco's complaints to StonCor.

In RFP 16, Campton asks for StonCor's federal tax returns since January 1, 2002. StonCor properly objected that this request seeks information beyond the scope of discovery. StonCor's taxes, total revenue, or total income are not at issue in this matter, and the defendants make no effort to explain otherwise. StonCor's damages are not calculated as a function of its company-wide revenue or profit. StonCor's tax returns simply are not relevant to this matter, and they contain no information that would lead to the discovery of admissible evidence that is not otherwise available. The defendant's request should be denied.

In RFP 18, the defendant asks, in the broadest of terms, for information about StonCor's pricing with Costco. Though his motion does not state why they seek that information, it is possible that he seeks it to determine StonCor's damages. StonCor has produced and will produce information that was provided to its expert to support damages calculations. (Keeley Dec. ¶¶18–19.) To the extent that the request goes beyond that information, it seeks documents that will provide no other information relevant to this matter.

In RFP 20, the defendant asks for all installer loan agreements. StonCor provided a sample agreement; all of its installer loans use this form, and there is nothing else to be gained by providing the actual agreements with all installers. (Neill Dec. ¶9.) Campton has not ever explained why this exemplar agreement does not constitute a sufficient response. StonCor has complied sufficiently with this request.

In RFP 21, the defendant asks for a complete list of all brands of polymer flooring that StonCor has utilized, specified, or sold from 1990 to the present. No such document exists, but StonCor's website identifies all of StonCor's products. That was provided to the defendant, and the information is equally available to him.

The defendant asks in RFP 22 for "any documents which relate to any sales, installation, or servicing you have made of polymer flooring products to customers from

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January 1, 2002 to the present." By its terms, that request asks for every document in StonCor's polymer flooring business for the past three years. StonCor appropriately objected on the overbreadth of that request, and on that basis should not have to comply with it.

Interrogatories 6, 7, and 8 were addressed above.

Interrogatory 13 asks StonCor to "identify" all "loan programs" with installers. As written, the request does not make sense, as a "loan program" cannot be "identified." StonCor has produced the sample loan agreement it uses with installers, (Keeley Dec. ¶9) and Campton has not ever explained why this exemplar agreement is not a sufficient response to this interrogatory.

Interrogatory 22 was addressed above.

8. Second Set of Interrogatories and Requests for Production

Campton served a second set of discovery requests. Ignoring the fact that he had already served 24 interrogatories, Campton served an additional 7 interrogatories without first seeking the Court's approval to do so, and without seeking StonCor's agreement to do so. StonCor accordingly responded to the first interrogatory of that set, which was the 25th interrogatory overall. (The interrogatory that StonCor responded to was entirely objectionable, and StonCor objected accordingly.) The rest of the interrogatories were above the limit of 25 interrogatories set out in the Federal Rules of Civil Procedure. StonCor was therefore under no obligation to answer them, and it properly refused to do so by objecting on that basis. Campton has not, in this motion, even attempted to explain why he might be entitled to more than 25 interrogatories. Because he has utterly failed to support any argument that he is entitled to answers to them, his request must be denied.

The defendant also makes the point repeatedly that the responses to these requests were not verified. There is no requirement that they be verified. FRCP 33 requires interrogatory answers to be signed by the party, and objections to be signed by the attorney making them. FRCP 33(b)(2). StonCor objected to each interrogatory in this set; there were

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no answers that required StonCor's verification. FRCP 34 requires only that responses be written; there is no requirement that they be verified (though FRCP 26 requires an attorney for a party to sign all discovery requests and responses). Thus, no portion of the second set of interrogatories and requests for production required a verification by StonCor. Notwithstanding this, and without conceding that a verification was necessary, on November 21, 2005, StonCor provided Campton with a verification of the responses.

9. Expert Report, Information, and Supporting Documents

On October 6, 2005, StonCor provided an expert witness disclosure for its damages expert. By that point, StonCor had still not received (and indeed still has not received) financial information from the defendants that StonCor's expert witness needs to compute damages. (Keeley Dec. ¶17.) Notwithstanding this lack of information, StonCor's expert prepared a partial damages evaluation and report; the report addresses only one component of damages: loss to StonCor. He is unable to calculate Hi-Tech's and Campton's unjust enrichment without data from them to support it. StonCor provided this report to the defendants on November 14, 2005. On November 17, 2005, StonCor provided to the defendants the documents that it provided to its expert, with the exception of those that the defendants already have or have access to. (Keeley Dec. ¶¶18–19.) StonCor has now complied with its obligations to disclose information about its expert, to the extent that it is able: StonCor still has not received information from the defendants necessary for its expert to fully compute damages.

C. Request for Fees and Expenses

If a motion to compel is denied, the Court should order the moving party to pay the expenses and attorney fees that the party opposing the motion incurred, unless the moving party was substantially justified in bringing the motion. Here, an award of expenses and fees to StonCor is more than appropriate. Campton's counsel failed to appropriately confer with StonCor's counsel before bringing this motion. Campton asks the court to order StonCor to

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respond to discovery requests that StonCor has already fully responded to. And for several of his requests, Campton failed to provide the Court with any justification for granting his request. In all, Campton lacked any reasonable, let alone substantial, justification for bringing this motion. Accordingly, Campton should be ordered to pay StonCor for the expenses and attorney fees that StonCor incurred in opposing this motion, for which StonCor will submit support.

IV. CONCLUSION

Campton has asked the court to order StonCor to respond to several discovery requests, yet Campton's motion was untimely, his counsel failed to appropriately confer with StonCor's counsel about the issues in the motion, and for each of the requests identified in the motion, StonCor has either already responded or will provide responses. The motion should be denied in its entirety. In addition, because Campton's motion was not substantially justified, the Court should order Campton to reimburse StonCor for its expenses and attorney fees incurred in opposing this motion.

DATED: November 21, 2005

BULLIVANT HOUSER BAILEY PC

/s/ Medora A. Marisseau

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CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the persons listed below:

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